IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4876 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEPUTY COMMANDANT GURUDEV SINGH REEN

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 4876 of 2000

MR JAYANT PATEL for Petitioner No. 1

MR ANANT S DAVE for Respondent No. 1

MR DN PATEL for Respondent No. 1,2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. With the consent of the ld. counsel appearing for the parties, matter is taken up for final hering today. Affidavit-in-rejoinder dated 12.10.2000 filed by

the petitioner which is produced today is taken on record.

2. Heard ld. counsel Mr. Jayant Patel for the petitioner and ld. Central Govt. Standing Counsel Mr. D.N. Patel for respondents. The petitioner is an Ex-Army Officer and at the relevant time was working as Deputy Commandant, Central Industrial Security Force. The petitioner was served with the chargesheet and departmental proceedings were initiated against him for following two charges :-

(1) That the said Shri G.S. Reen while functioning as Deputy Commandant, CISF Unit SAC Ahmedabad during the period from 21.1.1992 to 4.7.1995 had disobeyed the order of superiors in that while he was ordered for posting from SAC Ahmedabad to RSP Rourkela and RSP Rourkela to FCI Gorakhpur and FCI Gorakhpur to NISA Hyderabad, he did not report for duty at new place of posting. Thus he exhibited complete defiance toweards the orders of superior authority. This act on the part of Shri Reen amounts to gross misconduct and an act of unbecoming of an officer of his status and service in the Armed Force of the Union.

(2) That during the aforesaid period and while functioning in the aforesaid unit, the said Shri G.S. Reen was posted out from the said unit and he did not turn up to comply with the orders of the superior authority and remained absent unauthorisedly for the period from 4.7.1995 to 7.3.1997. This act on the part of Shri G.S. Reen amounts to dereliction of duty and unbecoming of an officer of his status and service in an Armed Force of the Union. "

3. It is contended by the petitioner that the Inquiry Officer, at the end of inquiry, exonerated the petitioner. However, the appointing authority imposed two penalties namely (i) compulsory retirement, and (ii) 10% deduction in the pensionary benefits.

4. If we peruse the charges, it is clear that according to the disciplinary authority, the petitioner has disobeyed the orders of the superiors while he was working as Deputy Commandant, CISF Unit SAC, Ahmedabad during the period from 27.1.1992 to 4.7.1995 by not reporting for duties at new place of postings as referred in charge No.1. The department considered this as defiance towards the orders of the superior authority.

5. The ld. counsel Mr. Jayant Patel for the petitioner has taken me through the entire proceedings udnertaken by the disciplinary authority and has challenged the validity of the proceedings and issue of violation of principles of natural justice is also gravely agitated by the petitioner. However, ld. counsel Mr. Jayant Patel, during the course of submissions, fairly submitted that without going into the merits of the allegations, since the petitioner has retired from service on reaching date of superannuation and that till this date, penalty has not been effectively imposed on the petition on account of the interim orders passed by the Court. Keeping in view this aspect, petitioner be permitted to retire with all consequential benefits.

6. Ld. Central Govt. Standing Counsel Mr. D.N. Patel has resisted the submissions made by ld. counsel Mr. Jayant Patel for the petitioner and has pointed out that in view of the Constitutional Amendment and other relevant aspects, respondents are able to meet with the allegations made by the petitioner. However, in view of the nature of the charges levelled against the petitioner and the fact that the order of penalty imposed could never be enforced because of the interim orders passed by the Court, the petitioner may be permitted and be treated as retired on reaching superannuation and to enjoy retiral benefits.

7. I have considered the nature of charges levelled against the petitioner. I have also considered the fact that at one point of time the petitioner was exonerated by the disciplinary authority. Without going into the plea of justification taken by the petitioner at one point of time and the fact that till this date the petitioner is prevented from enjoying retiral benefits, the same would be the adequate penalty for the wrong allegedly committed by him. The order of penalty, in the facts and circumstances of the case, is disproportionate. This Court being Court of equity and good conscience coupled with the fact that the petitioner is an Ex-Army Officer, I am inclined to agree with the say of ld. Counsel Mr. Jayant Patel that the order of penalty should not be imposed upon the petitioner and he should be permitted to enjoy all retiral benefits, without any other advantage.

8. Under the circumstances, the petition is partly allowed. The impugned order of penalty is hereby quashed and set aside and petitioner is permitted to retire on and from the date of reaching superannuation. Respondents are directed to pay all the retiral benefits

to the petitioner as early as possible and preferably with Six Months from today. Rule is made absolute accordingly. No costs.

Direct Service is permitted.

20.9.2001 [C.K. BUCH, J]

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